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5 **Attorneys for Project Disbursement Group, Inc.**

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7 **UNITED STATES BANKRUPTCY COURT**
8 **SOUTHERN DISTRICT OF NEVADA**
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11 In re:

12 USA COMMERCIAL MORTGAGE
13 COMPANY,

14 Debtor.

BK-06-10075-lbr
Chapter 11

EMERGENCY MOTION FOR ORDER
REGARDING PROJECT DISBURSEMENT
GROUP, INC.'S DISBURSEMENT OF
INTEREST PAYMENTS TO DEBTOR

Date: OST Requested

Time: OST Requested

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18 PROJECT DISBURSEMENT GROUP, INC. ("PDG"), by and through its counsel,
19 Matthew Q. Callister of the Law Firm of Callister & Reynolds, hereby files this Emergency
20 Motion For An Order Regarding PDG's Disbursement of Interest Payments to Debtor (the
21 "Motion"). The Motion is based on the Points and Authorities set forth herein, including any
22 pleadings on file, as well as any argument presented at the time of hearing.

23 PDG requests that the Motion be granted and an Order entered directing PDG with
24 regards to certain interest payments from the interest reserve portions of various loans (the
25 "Interest Payments") for which PDG services on behalf of Debtor. PDG and Debtor have
26 executed a stipulation with regards to the Interest Payments (the "Stipulation") and PDG seeks
27 further guidance from this Court as to whether PDG should make the Interest Payments to Debtor
28 as set forth in the Stipulation, retain the payments, make payments to another third party as

1 directed by this Court, or file a motion to interplead these funds.

2 **Points and Authorities**

3 **I. Factual Background**

4 1. Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy
5 Code on April 13, 2006 (the "Petition Date").

6 2. Prior to the Petition Date, PDG and Debtor entered into several written
7 agreements entitled "Control Account Escrow Agreement and Security Agreement" (the "Escrow
8 Agreements").

9 3. The parties of the Escrow Agreements consisted of: 1) PDG, 2) the Debtor as
10 authorized Agent and Servicer for certain loan investors, and 3) certain borrowers (the
11 "Borrowers").

12 4. Prior to the Petition Date, PDG and Debtor entered into written agreements
13 entitled "Agreement for Construction Control Services" (the "Control Services Agreements").

14 5. The parties of the Control Services Agreements consisted of 1) PDG, and 2)
15 Debtor, and related to loans to the Borrowers.

16 6. PDG acted and acts as disbursement agent for the Debtor and in some instances
17 for the Borrower in connection with loans that were originated and are serviced by the Debtor.

18 7. Pursuant to the terms of the Escrow Agreements and the Control Services
19 Agreements, the Debtor, as Servicer forwarded to PDG prior to the Petition Date, certain loan
20 funds: (1) to be held by PDG as interest reserves to be disbursed periodically to the Debtor (in its
21 capacity as Agent and Servicer) as interest payments for the loans, and (2) in some cases, to be
22 held by PDG as construction funds to be disbursed as directed by the Borrowers, with the consent
23 of the Debtor as Servicer, as construction advances in connection with the Loans.

24 8. PDG is still holding some of the loan funds to be disbursed pursuant to the
25 Escrow Agreements and Control Services Agreements.

26 9. PDG, after the Petition Date, continued to disburse loan funds as directed by the
27 Borrowers, with the consent of the Debtor as Servicer, as construction advances in connection
28 with the Loans.

1 Motion at pp. 11-12. Debtor further asserts that pursuant to Section 363(c)(1) of the Bankruptcy
2 Code, that it is allowed to operate in the ordinary course of its business, without notice or
3 hearing.

4 PDG has currently stipulated with Debtor to continue making all payments under the
5 Escrow Agreements and the Control Services Agreements. However, PDG seeks a permanent
6 order from this Court directing PDG to continue making payments as agreed in the Stipulation, to
7 retain the funds, to pay the funds to another party whom this Court directs, or to file a motion to
8 interplead the funds with this Court.

9 DATED this 22nd day of May, 2006.

10 /s/ Matthew Callister
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16 Attorneys for PDG
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